



1 front and rear buildings presented a public nuisance and needed to be demolished. Cotton alleges  
2 that the City sent notice of the demolition to the address of a different partial owner of the property  
3 and that he was therefore never properly notified of the planned demolition. Sometime in 2005,  
4 the City demolished the front and rear buildings on the property and then assessed an abatement  
5 fee of \$16,225.00 on Cotton for the cost of the demolition. On April 20, 2005, the City held a  
6 hearing regarding the abatement fee, after which it placed a lien on Cotton's property. Cotton  
7 alleges the City again sent notice of the hearing to a separate property owner, and thus failed to  
8 properly notify Cotton of the hearing.

9           On February 14, 2007, Cotton filed suit in this Court against the City, alleging five  
10 causes of action arising out of the demolition of his property: (1) trespass, (2) declaratory relief; (3)  
11 waste; (4) taking of real property; and (5) taking of personal property. On October 31, 2007, this  
12 Court dismissed the lawsuit for failure to properly serve the City. On March 12, 2010, the Clark  
13 County Treasurer informed Cotton it would foreclose on the lien and sell the property if Cotton did  
14 not pay the abatement fee prior to April 12. On April 8, Cotton again filed suit in this Court, this  
15 time against the City and the Clark County Treasurer, and alleged claims for (1) violation of 42  
16 U.S.C. § 1983 (failure to provide notice of the demolition); (2) violation of 42 U.S.C. § 1983  
17 (failure to provide notice of the abatement fee hearing); and (3) injunctive relief.

18           After Cotton served the City, the City filed a Motion to Dismiss, or in the  
19 alternative, Motion for Summary Judgment. The Clark County Treasurer has also filed a separate  
20 Motion to Dismiss and Joinder to City of Las Vegas' Motion to Dismiss. Finally, Cotton has filed  
21 a Motion for Discovery. For the reasons discussed below, the Court grants Defendants' Motions  
22 and denies Cotton's Motion as moot.

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## DISCUSSION

The Court interprets Defendants' motions as motions for summary judgment.

### I. Legal Standard

A court will grant summary judgment if "the pleadings, the discovery and disclosure materials on file, and any affidavits show there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if there is a sufficient evidentiary basis on which a reasonable fact-finder could find for the nonmoving party, and a dispute is "material" if it could affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986). In evaluating a motion, a court views all facts and draws all inferences in the light most favorable to the nonmoving party. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982).

The movant bears the burden of showing that there are no genuine issues of material fact. *Id.* "In order to carry its burden of production, the moving party must either produce evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). Once the movant satisfies the requirements of Rule 56, the burden shifts to the party resisting the motion to "set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 256; *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). The nonmoving party "may not rely on denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery material, to show that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and "must do more than simply show that there is some metaphysical doubt as to the material facts," *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986).

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1 **II. Analysis**

2 **A. The City/County Treasurer's Motion for Summary Judgment**

3 Cotton brings three claims against Defendants, two of which arise out of 42 U.S.C.  
4 § 1983. First, Cotton alleges Defendants violated his federal due process rights under § 1983  
5 when they failed to give notice of the proposed demolition. Cotton also alleges Defendants  
6 violated his due process rights by failing to properly notify him of the hearing regarding the  
7 abatement fee. Finally, Cotton asks for injunctive relief to prevent Defendants from foreclosing on  
8 the property to satisfy the abatement fee.

9 Defendants ask the Court to grant summary judgment because the applicable statute  
10 of limitations bars Cotton's claims. Because § 1983 does not provide a statute of limitations,  
11 federal courts apply the forum state's statute of limitations for personal injury claims when  
12 addressing whether a § 1983 claim is time-barred. *The Comm. Concerning Cmty. Improvement v.*  
13 *City of Modesto*, 583 F.3d 690, 701 n.4 (9th Cir. 2009). In Nevada, the statute of limitations for  
14 personal injury actions is two years. NRS 11.190(4)(e). Cotton's § 1983 claims are therefore  
15 barred by Nevada's statute of limitations if Cotton knew or should have known about the proposed  
16 demolition and the abatement fee two years before he filed suit in this Court. *See RK Ventures,*  
17 *Inc. v. City of Seattle*, 307 F.3d 1045, 1058 (9th Cir. 2002) (statute of limitations begins to run  
18 when the plaintiff "know[s] or have reason to know of the injury that is the basis for [his] action").  
19 The Court also notes that "it is well-established . . . that lack of legal sophistication or pro se status  
20 is not sufficient to justify tolling of the statute of limitations." *See Reid v. Sisto*, 2010 WL  
21 1006486, \*6 (citing *Roy v. Lampert*, 465 F.3d 964, 970 (9th Cir. 2006)).

22 The Court grants Defendants' motion for summary judgment on Cotton's first §  
23 1983 claim because the record clearly indicates that Cotton knew of the demolition of his property  
24 two years prior to filing this lawsuit. In fact, Cotton has previously filed suit regarding this same  
25 issue: in 2007, Cotton filed a lawsuit in this Court in which he alleged that the demolition of his  
26 property violated his constitutional rights. Because Cotton knew of the demolition of the buildings

1 on his property in 2007, no reasonable juror could conclude that the two-year statute of limitations  
2 had not run when Cotton filed suit in April 2010. For this reason, the Court grants Defendants'  
3 motion for summary judgment on Cotton's first § 1983 claim.

4 Nevada's two-year statute of limitations also bars Cotton's § 1983 claim arising  
5 from Defendants' alleged failure to give proper notice regarding the abatement fee. After  
6 reviewing the evidence, the Court concludes that as a matter of law Cotton received constructive  
7 notice regarding the abatement fee placed on his property. In his Opposition to the City's Motion,  
8 Cotton attaches his property tax records from 2005 to 2010. (Dkt. #9, Opp'n Ex. 2.) The tax  
9 records for the fiscal year of 2006-2007 show an abatement fee of \$21,640.90 (which includes  
10 interest and other fees) resulting from the demolition of Cotton's property. (*Id.* Ex. 2C.) The  
11 Court finds this tax record is sufficient to give Cotton constructive notice regarding his obligation  
12 to pay the abatement fee because as a property owner Cotton is responsible for paying annual taxes  
13 on his land. The fact that Cotton attaches his tax records from previous years and that he  
14 apparently paid all other annual property taxes further bolsters the conclusion that Cotton should  
15 have known of the abatement on his property. Thus, even if Defendants failed to notify Cotton of  
16 the abatement fee in 2005, the statute of limitations bars his second § 1983 claim because he knew  
17 or should have known about the fee no later than 2007—three year prior to the date he filed his  
18 second lawsuit. Accordingly, the Court grants Defendants' motion for summary judgment on  
19 Cotton's second § 1983 claim.<sup>1</sup>

20 Finally, the Court grants Defendants' motion for summary judgment on Cotton's  
21 request that the Court stop the foreclosure sale from moving forward. Because the Court grants  
22 Defendants' motion for summary judgment on Cotton's first two causes of action, Cotton is not  
23 entitled to the injunctive relief he seeks.

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25 <sup>1</sup> Although he does not bring them as causes of action, Cotton makes passing reference to trespass and  
26 NRS 268.4122, which requires the City to give notice prior to collecting abatement fees. Nonetheless, even if  
Cotton had asserted claims for trespass and violation of NRS 268.4122, his claims would still be barred by the  
statute of limitations for the reasons stated in this order. *See* NRS 11.190(3)(a-b).

1           **B.     Motion for Discovery**

2           The Court denies Cotton's motion for discovery as moot because none of Cotton's  
3 claims survive Defendants' motion for summary judgment.

4                                   **CONCLUSION**

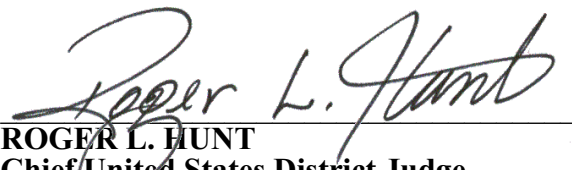
5           Accordingly, and for good cause appearing,

6           IT IS HEREBY ORDERED that the City/County Treasurer's Motion to Dismiss, or  
7 for Summary Judgment (#5/#13) is GRANTED.

8           IT IS FURTHER ORDERED that Cotton's Motion for Discovery (#11) is DENIED  
9 as moot.

10          The Clerk of the Court is ordered to close this case.

11          Dated: August 4, 2010.

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15                                   **ROGER L. HUNT**  
16                                   **Chief United States District Judge**  
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